

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Applications for Review of Orders)	DA 03-45
Designating Eligible Telecommunications)	
Carriers in the State of Alabama)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communication Commission's (FCC, Commission) Public Notice¹ seeking comment on applications for review of orders designating RCC Holdings, Inc. (RCC) and Cellular South License, Inc. (Cellular South) as eligible telecommunications carriers (ETCs) in Alabama. The Wireline Competition Bureau (WCB) designated RCC and Cellular South as ETCs throughout their licensed service areas in rural and non-rural incumbent local exchange carrier (ILEC) areas in the state of Alabama.² The applications for review were filed by the Alabama Rural Local Exchange

¹ *Pleading Cycle Established For Comments Regarding Applications For Review Of Orders Designating Eligible Telecommunications Carriers In The State Of Alabama*, CC Docket No. 96-45, DA 03-45, Public Notice (rel. Jan. 10, 2003).

² *Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, Memorandum Opinion and Order (Wireline Comp. Bur. Rel. Nov. 27, 2002) (RCC Designation Order); *Federal-State Joint Board on Universal Service; Cellular South License*,

Carriers (Alabama Rural LECs) on December 23, 2002 and December 30, 2002, respectively.³

OPASTCO is a national trade association representing approximately 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition, they are all ETCs in their service areas.

As a result of the rapidly growing amount of universal service support being received by competitive ETCs, the Commission has initiated a proceeding to review its rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. In its Alabama Designation Orders, the WCB has applied policies and rules that the Commission has directed the Federal-State Joint Board on Universal Service (Joint Board) to take a fresh look at and may very well be modified. All of the issues the Commission has referred to the Joint Board will have a direct effect on the designation of competitive ETCs and on the expectations all ETCs will have regarding the universal service support that they will receive. Therefore, OPASTCO agrees with the Alabama Rural LECs that the FCC should temporarily set aside the ETC designations of RCC and Cellular South in the rural service areas of Alabama. In addition, it should direct the WCB to refrain from considering other competitive ETC applications for rural service areas pending the resolution of the issues raised in the FCC's referral to the Joint

Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, CC Docket No. 96-45, DA 02-3317, Memorandum Opinion and Order (Wireline Comp. Bur. Rel. Dec. 4, 2002) (Cellular South Designation Order) (collectively, Alabama Designation Orders).

³ Application for Review of the Alabama Rural Local Exchange Carriers in CC Docket No. 96-45, DA 02-746, DA 02-3181 (fil. Dec. 23, 2002) (December 23 Application for Review); Application for Review of

Board, including the development of appropriate policy guidelines for the review of ETC applications for the areas served by rural telephone companies. Furthermore, the Commission should review the statement made in the Alabama Designation Orders that it is FCC policy to promote competition in all areas, including high-cost areas. In the context of considering whether or not an additional ETC will serve the public interest in a rural service area, this policy conflicts with Section 214(e)(2) of the Communications Act, as amended.

II. THE FCC SHOULD GRANT THE RELIEF SOUGHT IN THE APPLICATIONS FOR REVIEW

On November 8, 2002, the FCC released an Order⁴ requesting that the Joint Board review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing service. The Joint Board Referral Order also asked the Joint Board to examine the process for designating ETCs and consider whether it is advisable to establish federal processing guidelines for ETC applications. The FCC issued its Joint Board Referral Order because "there have been many changes in the telecommunications marketplace,"⁵ including a rapidly growing amount of high-cost universal service support being received by competitive ETCs. In fact, the support dispersed to competitive ETCs has grown from approximately \$14 million in the third quarter of 2002⁶ to a projection of approximately \$37 million for the second quarter of 2003.⁷

the Alabama Rural Local Exchange Carriers in CC Docket No. 96-45, DA 02-1465, DA 02-3317 (fil. Dec. 30, 2002) (December 30 Application for Review) (collectively, Applications for Review).

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307, Order (rel. Nov. 8, 2002) (Joint Board Referral Order).

⁵ *Id.*, para. 4.

⁶ *Id.*

⁷ Federal Universal Service Support Mechanisms Fund Size Projections For the Second Quarter 2003, Appendix HC 1 (Universal Service Administrative Company, Jan. 31, 2003).

Despite the Commission's initiation of a review of its rules relating to high-cost support and competitive ETCs, the WCB determined that those issues were beyond the scope of its Alabama Designation Orders.⁸ This was a faulty determination. As the Alabama Rural LECs have correctly stated, the Alabama Designation Orders involve policies that have been referred to the Joint Board for review and have not been resolved by the Commission.⁹ Every one of the items that the Commission has requested the Joint Board to review will have a significant impact on the designation of competitive ETCs, and on the expectations of all ETCs as to the high-cost funding that they will receive.¹⁰

For example, the Joint Board Referral Order noted that some parties have expressed concerns that universal service goals will be undermined if state commissions do not impose similar universal service obligations on ILECs and competitive LECs.¹¹ If the Commission were to ultimately decide that all carriers receiving high-cost support must be held to the same service obligations and regulatory standards, some competitive carriers might be less willing to seek ETC status. Moreover, until those issues are resolved, it remains unclear how the WCB should evaluate whether or not an additional ETC would serve the public interest in a rural service area. Thus, it is inappropriate for the WCB to consider competitive ETC applications for rural service areas, such as the ones addressed in the Alabama Designation Orders, until these issues have been vetted and resolved by the Joint Board and the Commission.

In addition, due in part to the considerable growth of the universal service fund (USF) over the past several years, the Commission felt compelled to temporarily apply

⁸ Alabama Designation Orders, paras. 3, 32.

⁹ Applications for Review, p. 8.

¹⁰ *Id.*, p. 11

¹¹ Joint Board Referral Order, para. 10.

unused funds from the Schools and Libraries program to “stabilize” the contribution factor in the third and fourth quarters of 2002 and the first quarter of 2003.¹² This unprecedented action has allowed the Commission to prevent significant increases in the contribution factor¹³ while it continues to consider long-term reforms to the universal service contribution mechanism. The Alabama Rural LECs correctly note that as additional wireless carriers are granted ETC status and request funding for their existing customer base, the fund will grow to “unmanageable proportions.”¹⁴ They demonstrate that were all mobile wireless providers nationwide to receive ETC status, it would increase the demand on the High-Cost program by over \$2 billion annually.¹⁵

In high-cost rural areas, if finite universal service resources are frequently divided among multiple providers, there may no longer be sufficient support to maintain even one provider of reliable, high-quality infrastructure. Such a situation will ultimately lead to deteriorating service quality, substantially higher rates, or even the financial failure of the carrier that serves as a “lifeline” for the most remotely located consumers.

Therefore, the FCC should temporarily rescind the ETC designations of RTC and Cellular South in the rural service areas of Alabama. In addition, it should instruct the WCB to refrain from reviewing other ETC applications for rural service areas until the issues raised in the Joint Board Referral Order have been resolved, including the issuance

¹² *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, First Report and Order, 17 FCC Rcd 11521, 11523, 11528, paras. 3, 14 (2002).

¹³ The Commission’s decision to apply unused schools and library funds to the USF collection requirement has allowed the contribution factor to remain at the second quarter 2002 level of 7.3 percent. Had the Commission not taken this action, the contribution factor would have risen to 8.8 percent in the third quarter of 2002, 9.3 percent in the fourth quarter of 2002, and 8.7 percent in the first quarter of 2003. *See, Wireline Competition Bureau Announces No Change in Third Quarter 2002 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 17 FCC Rcd 11128 (2002); *Proposed Fourth Quarter 2002 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 17 FCC Rcd 16800 (2002); *Proposed First Quarter 2003 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 02-3387, Public Notice (rel. Dec. 9, 2002).

¹⁴ Applications for Review, p. 14.

of appropriate policy guidelines for consideration of ETCs in rural service areas. To do otherwise would be inconsistent with the Commission's actions regarding the contribution factor and its referral to the Joint Board, and would only serve to further jeopardize the sustainability of the USF.

III. THE WCB'S ASSERTION IN ITS PUBLIC INTEREST ANALYSES THAT IT IS FCC POLICY TO PROMOTE COMPETITION IN HIGH-COST AREAS IS AT ODDS WITH THE ACT AND SHOULD BE REVIEWED BY THE COMMISSION

OPASTCO believes that review is required of the public interest analyses in the Alabama Designation Orders insofar that they assert that it is Commission policy to "promot[e] competition in all areas, including high-cost areas."¹⁶ This statement needs to be reconsidered in the context of a competitive ETC public interest analysis for a rural service area because it is in direct conflict with Section 214(e)(2) of the Communications Act of 1934, as amended. Section 214(e)(2) states in relevant part:

...the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Section 214(e)(2) demonstrates that Congress did not presume that supported competition would serve the public interest in all areas served by rural telephone companies. If it had, there would have been no need for it to say that state commissions (and the FCC) "may" designate more than one carrier in rural telephone company service areas, as opposed to "shall" for all other service areas, or require a public interest

¹⁵ December 23 Application for Review, p. 16, fn. 55; December 30 Application for Review, p. 16, fn. 54.

¹⁶ RCC Designation Order, para. 26; Cellular South Designation Order, para. 28.

determination just for these service areas. Thus, factors *other than* the promotion of competition in rural service areas must play the dominant role in public interest determinations.

OPASTCO concurs with the Alabama Rural LECs that the public interest is advanced only “when the benefits that will be derived from supporting multiple carriers exceed the cost of supporting multiple networks.”¹⁷ The costs of supporting multiple networks include both the increased funding requirements for any additional ETC, as well as the decreased network efficiency of all carriers that results when multiple carriers serve sparsely populated areas. Commissioner Jonathan Adelstein made a similar point in a recent speech:

We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers. The public interest also demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn’t be given as a matter of course just because it appears they meet other qualifications.¹⁸

It is contrary to the intent of Congress for the WCB to approach public interest determinations in rural service areas with an underlying philosophy that competition must be promoted “in all areas, including high-cost areas.” As the Alabama Rural LECs accurately note, wireless competition already exists throughout rural America.¹⁹ However, in certain sparsely populated rural markets, supported competition is “doomed to both economic and policy failure that will ultimately harm rural consumers and the public interest.”²⁰ Both costs and benefits must be weighed if limited federal funding is

¹⁷ Applications for Review, p. 17.

¹⁸ *Rural America and the Promise of Tomorrow*, Remarks of Commissioner Jonathan S. Adelstein, NTCA Annual Meeting and Expo, Phoenix, AZ (Feb. 3, 2003).

¹⁹ Applications for review, p. 18.

²⁰ *Id.*, p. 19.

to be managed for the optimal public benefit. OPASTCO wholeheartedly agrees with the Alabama Rural LECs that appropriate principles and guidelines need to be established for conducting public interest determinations before the WCB continues considering competitive ETC applications for rural service areas.²¹

IV. CONCLUSION

For the reasons stated above and in the Applications for Review, the FCC should grant the relief sought by the Alabama Rural LECs. The Alabama Rural LECs have convincingly demonstrated that the issues raised in the Alabama Designation Orders are inextricably intertwined with the unresolved issues raised in the FCC's November 8, 2002 Joint Board Referral Order. Those issues, which concern the rules relating to high-cost universal service support in competitive study areas and the process for resolving requests for ETC designations, are likely to be modified. Therefore, the FCC should temporarily set aside the ETC designations of RCC and Cellular South in the rural service areas of Alabama. Similarly, the WCB should be required to withhold from considering any additional competitive ETC applications for rural service areas until the proceeding initiated by the Joint Board Referral Order has been completed and the FCC has issued appropriate policy guidelines for the designation of ETCs in rural service areas. In addition, the Commission should review the WCB's statement in the Alabama Designation Orders that it is FCC policy to promote competition in high-cost areas. In the context of a public interest analysis for a rural service area, this conflicts with the Communications Act, as amended.

²¹ *Id.*, p. 21.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 10th day of February, 2003, to those listed on the attached list.

By: /s/ Jeffrey W. Smith
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